

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1613 of 2000

with

CIVIL APPLICATION NO.3642 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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LEGAL HEIRS & REPRES OF DEC NARANBHAI DURLABHBHAI TANDEL

Versus

KASHIBEN RAMJIBHAI TANDEL

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Appearance:

M/S.VYAS ASSOCIATES for Petitioners  
RULE SERVED BY DS for Respondent No. 1  
MRS KETTY A MEHTA for Respondent No. 4  
MR ANANT S DAVE for Respondent No. 7

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/10/2000

ORAL JUDGEMENT

In this petition under Article 226 of the  
Constitution, the petitioners have challenged the order

dated 29.7.1995 passed by the Deputy Commissioner of Customs, Valsad granting licence to Dhirubhai Ramjibhai Tandel and Dhansukhbhai Ramjibhai Tandel, respondent Nos 4 and 5 herein, for plying the vessel "Mahabhakti".

2. The petitioners are the heirs of deceased Naranbhai and the respondents are the heirs of deceased Ramjibhai, both Naranbhai and Ramjibhai were brothers. There was a vessel, namely, "Mahabhakti" which was registered in the joint names of Naranbhai Durlabbhai Tandel and Ramjibhai Durlabbhai Tandel. Naranbhai expired on 9.1.1989 and Ramjibhai expired on 30.4.1997. The dispute is between the heirs of Naranbhai on the one hand and the heirs of Ramjibhai on the other hand. The petitioners' case is that deceased Ramjibhai and his sons had taken away the original machinery including the main engine from the vessel "Mahabhakti" and fixed the machinery in another vessel, namely, "Jaysagar" which was also of the joint ownership of two brothers, Naranbhai and Ramjibhai. According to the petitioners, Ramjibhai and his sons sold away the vessel "Jaysagar" without the consent of the petitioners. The petitioners apprehend that the vessel Mahabhakti will also be sold away in the same fashion, and therefore, they filed Regular Civil Suit No.31/90 for permanent injunction restraining deceased Ramjibhai and his sons from transferring the vessel "Mahabhakti". The petitioners have also filed second suit being Regular Civil Suit No.64/95 for partition of properties and in the said suit the petitioners have applied for temporary injunction restraining the respondents not only from transferring the vessel but also from plying the vessel and vide judgment and order dated 29.6.1995 the learned Civil Judge (SD), Valsad restrained the respondents from transferring the vessel "Mahabhakti" to anybody in any manner and also restrained the respondents from handing over the said vessel to anyone till final disposal of the suit. However, the learned Civil Judge did not grant injunction as prayed for from plying the vessel in the sea. Aggrieved by the aforesaid order dated 29.6.1995 the petitioners preferred A.O.No.380/95 before this Court and this Court passed the following order on 7.2.1996:

"Heard the learned advocates. In this case, number of disputed questions of fact are required to be decided by the trial court viz whether the Partnership firm of Naranbhai Tandel & Co is in existence or not and, whether the ship in question was of the joint ownership of the deceased Naranbhai Tandel and Ramjibhai Tandel.

These questions can only be decided in the suit where the parties will lead proper evidence to that effect. The order passed by the trial court permitting the respondents to ply the vessel in question is likely to prejudice the appellants. Under the circumstances, till the decision of the suit, some workable arrangement is required to be made in the sense that both the parties will be entitled to ply the vessel in question as if both are co-owners of vessel in question. In that view of the matter, till rights of the parties are finally decided by the trial court, it will be open to the parties to apply before the Customs Authorities to ply the vessel in question as if they are the co-owners. The earlier order passed by this Court is modified to this extent. Rule is made absolute accordingly with no order as to costs."

3. Thereafter, the said order was made final on 7.3.2000 when the entire appeal came to be disposed of by confirming the interim relief dated 7.2.96 till the decision of the suit and the trial court was directed to expedite the hearing of the civil suit. Pursuant to the above liberty respondent Nos 4 and 6 applied before the Deputy Commissioner of Customs for licence to ply the vessel "Mahabhakti" and the licence came to be granted by the order dated 29.7.1999(at annexure "G" to the petition) which is under challenge in this petition.

4. During pendency of this petition, the petitioners have also filed Civil Application No.3642/2000 for directing the Custom authorities to bring back the vessel in question to its original place in the river. In that civil application ad interim relief was granted on 26.5.2000 directing the respondent Custom authorities to take charge of the ship in question during the interregnum period as a temporary charge till the hearing of the petition.

5. The petitioners' case is that without hearing the petitioners the licence ought not to have been granted. Reliance has been placed on the application dated 2.10.1999(at annexure "J" to the petition). Mr.Vyas, learned counsel for the petitioners has stated that the suit for partition is still pending and is not decided.

6. Mr.Vyas, learned counsel for the petitioners has further submitted that if the respondents are permitted to ply the vessel they may take the vessel out of the

control of the petitioners . It is further submitted that this Court has directed that the vessel can be plied by all the parties as coowners, respondent Nos 4 and 6 do not have the right to ply the vessel. It is submitted that the vessel may not be permitted to be plied by the persons who are not the registered owners of the vessel under the Act and the respondent authorities be restrained from granting licence in their favour.

7. Ms.Ketty Mehta, learned counsel for the respondents has submitted that this petition has become infructuous as the validity period of the licence was till 5th June 2000 and in view of expiry of the said period by efflux of time, this petition has become infructuous. It is further submitted that respondent Nos 4 and 6 have also submitted an application dated 3.7.2000 for renewal of licence. Mrs.Mehta has also produced a copy of the communication dated 25.9.2000 from the Customs authorities to the effect that the matter is pending the Court and the request for transfer of the vessel can not be accepted without permission of the Court.

8. Ms.Ketty Mehta appearing for respondent Nos 4 & 6 has submitted that this Court has already passed order in AO No.380/95 permitting the petitioners as well as the respondents to ply the vessel "Mahabhakti" as coowners. Respondent Nos 4 and 6 are actually plying the vessel. The petitioners have also other source of livelihood, and they are agriculturists and in private employment whereas the only source of livelihood of respondent No.6 is by plying the vessel. By not allowing the vessel to be plied and its being kept idle it causes damage to the vessel lying in the river. Hence, the Deputy Commissioner of Customs was justified in granting licence in July 1999 and the authorities be permitted to renew the licence to ply the vessel.

9. Having heard the learned counsel for the parties, it appears to the Court that since the Court had already passed interim as well as final order in AO No.380/95 that the vessel can be plied by both the parties as coowners, and that it will be open to the parties to apply to the Custom Authorities as if they are the coowners, it will not be proper for this Court to permit the petitioners to prevent the respondents from plying the vessel. It is not that only respondent Nos 4 and 6 can ply the vessel because as per the orders in the Appeal From Order, the heirs of Naranbhai as well as the heirs of Ramjibhai can also ply the vessel.

However, in view of the stalemate created by the parties, it would be just and proper to direct respondent No.7 to issue a notice to the petitioners and respondent Nos 4 & 6 for remaining present before him and for expressing their willingness to get the licence and ply the vessel Mahabhakti. After hearing all the parties, respondent No.7-Deputy Commissioner, Customs shall take decision as to who should ply the vessel as coowners, if they are ready and willing to ply the vessel in joint names, and subject to what terms and conditions. After granting such licence, respondent No.7 shall handover the physical custody of the vessel to such persons.

10. In the meantime the Civil Court at Valsad shall hear and decide the Civil suits pending before it as expeditiously as possible and preferably within three months from the date of receipt of the writ of this Court and submit its report of compliance with these directions immediately thereafter.

11. The petition is disposed of accordingly. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12. Since the main petition is disposed of Civil Application No. 3642/200 is disposed of. Ad-interim order passed therein is vacated.

3.10.2000 (M.S.SHAH,J)